



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 02-6; FCC 21-107; FRS 51933]

#### Schools and Libraries Universal Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission propose to update the definition of library in the Commission's rules to provide clarity regarding the eligibility of Tribal libraries and promote increased participation of underrepresented Tribal libraries in the E-Rate Program. The Federal Communications Commission seeks to address a longstanding issue that has impeded Tribal libraries in seeking E-Rate support.

**DATES:** Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and reply comments are due on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** All filings should refer to CC Docket No. 02-6. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments and replies may be filed electronically by using the Internet by accessing ECFS: <http://www.fcc.gov/ecfs>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Federal Communications Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.
- *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

**FOR FURTHER INFORMATION CONTACT:** Kate Dumouchel, Wireline Competition Bureau, (202) 418-7400 or by email at [Kate.Dumouchel@fcc.gov](mailto:Kate.Dumouchel@fcc.gov). The Federal Communications Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking in CC Docket No. 02-6; FCC 21-107, adopted September 30, 2021 and released on October 1, 2021. Due to the COVID-19 pandemic, the Federal Communications Commission's headquarters will be closed to the general public until further notice. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>. The full text of this document is available

at the following Internet address: <https://www.fcc.gov/document/fcc-supports-broadband-tribal-libraries-through-e-rate-0>.

## **I. INTRODUCTION**

1. The E-Rate Program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and internal connections to connect today's students and library patrons with next-generation learning opportunities and services. The Commission proposes to update the definition of library in the Commission's rules to provide clarity regarding the eligibility of Tribal libraries and promote increased participation of underrepresented Tribal libraries in the E-Rate Program. In doing so, the Commission seeks to address a longstanding issue that has impeded Tribal libraries in seeking E-Rate support.

## **II. DISCUSSION**

2. Consistent with the 2018 amendments to the LSTA, the Commission proposes to update §§ 54.500 and 54.501(b)(1) of the Commission's rules to adopt the amended definition of library included in the LSTA and to clarify that Tribal libraries are eligible for support through the E-Rate Program. This amendment will remove the outdated reference to the 1996 version of the LSTA in the E-Rate rules, make the eligibility rules for the E-Rate Program consistent with those of the Emergency Connectivity Fund Program, and promote the increased participation of Tribal libraries in the E-Rate Program by making clear that Tribal libraries are eligible.

3. While some Tribal libraries have received E-Rate support to the extent the relevant State library administrative agencies determined they were eligible for assistance, they are still greatly underrepresented among the total number of E-Rate applicants. According to a report by the Institute of Museum and Library Services (IMLS) and the Association of Tribal Archives, Libraries, and Museums (ATALM), only 15 percent of Tribal libraries reported receiving E-Rate support, in part, due to eligibility requirements. When establishing the rules for the Emergency Connectivity Fund Program, the Commission clarified that Tribal libraries were eligible for support under the Emergency Connectivity Fund Program. The Commission now proposes to update the E-Rate rules in a consistent manner to add a Tribal library to the definition of library and remove references to the outdated Public Law 104-208. The

Commission proposes these changes in order to clarify that because Tribal libraries are statutorily eligible for support from State library administrative agencies consistent with 2018 amendments to the LSTA, they are therefore eligible for support through the E-Rate Program – even if LSTA funds have not been received by a Tribal library. The Commission anticipates that this change will resolve existing confusion about Tribal libraries’ eligibility and facilitate access to E-Rate funds. By making Tribal eligibility for E-Rate support clear, the Commission seeks to further the goal of increasing Tribal libraries’ access to advanced telecommunications and information services, internal connections, and basic maintenance of internal connections through the E-Rate Program. The Commission seeks comment on this proposed rule change, as well as what impact, if any, such rule change may have on the administration of the E-Rate Program.

4. The Commission also seeks comment on whether the Commission should consider any other measures to ensure Tribal schools and libraries have access to the E-Rate Program. Are there opportunities to increase participation of these Tribal entities in the E-Rate Program, such as through additional trainings or outreach? In 2016, GAO issued recommendations to the Commission for expanding Tribal access to E-Rate funding. The Commission seeks comment on those recommendations here. Specifically, would consultation with other relevant federal agencies, such as IMLS or the Department of Interior Bureau of Indian Affairs, when developing and promoting such training programs and outreach improve their effectiveness? Are there ways to improve reporting on Tribal entities to gain a more complete understanding of Tribal participation in the E-Rate Program? Should the Commission consider developing performance goals and measures to track progress of achieving the Commission’s goal of increasing access to affordable broadband for Tribal schools and libraries? If so, the Commission seeks comment on what these might include.

5. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including Indigenous and Native American persons, people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how our

proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

### **III. PROCEDURAL MATTERS**

6. *Initial Regulatory Flexibility Analysis.*— As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice of Proposed Rulemaking, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA. In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the Federal Register.

#### **A. Need for, and Objectives of, the Proposed Rules**

7. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate Program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.

8. Taking steps to close the digital divide is a top priority for the Commission. The E-Rate Program provides a vital source of support to schools and libraries, ensuring that students and library patrons across the nation have access to high-speed broadband and essential communications services. The rules the Commission proposes in the Notice of Proposed Rulemaking seek to update the E-Rate Program rules to be consistent with the amended LSTA and to clarify that Tribal libraries are eligible to

apply for and receive E-Rate funding. The Commission seeks comment on these proposals as well as comments as to whether there are other measures the Commission can take to ensure Tribal schools and libraries have access to E-Rate funds, consistent with Section 254(h)(4).

## **B. Legal Basis**

9. The proposed action is authorized pursuant to sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

10. The RFA directs agencies to provide a description of and, where feasible, and estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

12. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were

approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

13. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

#### **1. Schools and Libraries**

14. As noted, a “small entity” includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.” A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12. A library includes “(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.” The proposals under consideration in the Notice of Proposed Rulemaking, if adopted, would update the definition of library to add Tribal libraries to the definition. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities. In funding year 2017,

approximately 103,699 schools and 11,810 libraries received funding under the schools and libraries universal service mechanism. Although the Commission is unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, the Commission estimates that fewer than 103,699 schools and 11,810 libraries might be affected annually by this action, notwithstanding the fact that more Tribal libraries may be encouraged to apply for funding should the proposals in the Notice of Proposed Rulemaking be adopted.

## **2. Telecommunications Service Providers**

15. Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total 1,307 an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

16. The Commission has included small incumbent LECs in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g. a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has, therefore, included small incumbent carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

17. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to IXCs. The closest NAICS Code category is Wired



Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

18. Competitive Access Providers (CAPs). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under the SBA size standard a Wired Telecommunications Carrier is a small entity if it employs no more than 1,500 employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. According to Commission data, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

19. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments primarily engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this total, 2,837 firms had fewer than 250 employees and 56 had 250 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

20. Wireless Telephony. Wireless telephony includes cellular, personal communications

services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this total, 2,837 firms had fewer than 250 employees and 56 had 250 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

### **3. Internet Service Providers (ISPs)**

21. Internet Service Providers (Broadband). Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year. Of this total, 2,964 operated with fewer than 250 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

22. Internet Service Providers (Non-Broadband). Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, U.S. Census Bureau data for 2017 shows that there were 1,079 firms that operated for the entire year. Of these firms, a total of 1,039 had gross annual receipts of less than \$25 million. Consequently, under this size standard a majority of firms in this

industry can be considered small.

#### **4. Vendors of Internal Connections**

23. *Vendors of Infrastructure Development or “Network Buildout.”* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are “Radio and Television Broadcasting and Wireless Communications Equipment” with a size standard of 1,250 employees or less and “Other Communications Equipment Manufacturing” with a size standard of 750 employees or less. U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment, 656 firms operated for the entire year. Of that number, 624 firms operated with fewer than 250 employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 shows that 321 firms operated for the year. Of that number, 310 operated with fewer than 250 employees. Based on this data, the Commission concludes that the majority of Vendors of Infrastructure Development or “Network Buildout” are small.

24. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees. U.S. Census Bureau data for 2017 show that there were 189 firms that operated for the entire year. Of this total, 177 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms can be considered small.

25. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment,

paggers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2017 show that 656 firms operated in this industry for the entire year. Of that number, 624 firms operated with fewer than 250 employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

26. The proposals under consideration in the Notice of Proposed Rulemaking, if adopted, should not result in new and/or modified reporting, recordkeeping and other compliance requirements for small or large entities. At this time, the Commission cannot quantify the cost of compliance with the potential rule changes in the Notice of Proposed Rulemaking, but the Commission anticipates that the result of any rule changes will produce requirements that are equal to existing requirements, and the Commission does not believe small entities will have to hire attorneys, engineers, consultants, or other professionals in order to comply. Updating the E-Rate rules to adopt the amended definition of library under the LSTA, for example, will clarify that Tribal libraries are eligible for support by statute – as they have been since Congress enacted the Museum and Library Services Act of 2018. Moreover, this clarity may also alleviate some of the issues that Tribal libraries face when seeking E-Rate support. Additionally, the Commission has sought comment on whether there are other measures the Commission can take to ensure Tribal schools and libraries have equal access to E-Rate funds. Regarding the Commission’s proposal on what documentation should be used to validate a Tribal library, the Commission has sought comment on whether that approach is feasible or practicable for demonstrating eligibility.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

27. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification,

consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

28. In the Notice of Proposed Rulemaking, the Commission has taken steps to minimize the economic impact on small entities with the rule changes that the Commission has proposed. Under the current E-Rate rules, only libraries eligible for assistance from a State library administrative agency under the 1996 version of the LSTA are eligible for E-Rate funding. Absent a rule change, Tribal libraries continue to face uncertainty about eligibility which leads to them being underrepresented among E-Rate applicants. The Commission has therefore proposed updating the rules to add Tribal libraries to the definition of library, which, if adopted, may encourage Tribal libraries to apply for and receive E-Rate support. The Commission expects to more fully consider ways to minimize the economic impact and explore alternatives for small entities following the review of comments filed in response to the Notice of Proposed rulemaking.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

29. None.

30. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

31. *Ex Parte Rules – Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission's rules, this Notice of Proposed Rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was

made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

32. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, the Commission finds the public interest requires a limited modification of the *ex parte* rules in this proceeding. Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act. However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period. To be clear, while the Commission recognizes consultation is critically important, the Commission emphasizes that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

33. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

34. Availability of Documents: Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street N.E., Washington, DC 20554.

#### **IV. ORDERING CLAUSES**

35. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1 through 4, 201-202, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403, this Notice of Proposed Rulemaking IS ADOPTED.

36. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR Part 54**

Communications common carriers, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,  
Secretary.

## Proposed Rules

For the reasons set forth above, the Commission proposes part 54 of title 47 of the Code of Federal Regulations to be amended as follows:

### **PART 54 – UNIVERSAL SERVICE**

1. The authority for part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601-1609, unless otherwise noted.

2. Amend § 54.500 by revising the definition of “library” to read as follows:

#### **§ 54.500 Terms and definitions.**

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*Library.* A “library” includes:

- (1) A public library;
- (2) A public elementary school or secondary school library;
- (3) A Tribal library;
- (4) An academic library;
- (5) A research library, which for the purpose of this section means a library that:
  - (i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and
  - (ii) Is not an integral part of an institution of higher education; and
- (6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

\* \* \* \* \*

3. Amend § 54.501 by revising paragraph (b)(1) to read as follows:

#### **§ 54.501 Eligible recipients.**



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(b) *Libraries.*

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (20 U.S.C. 9122) and not excluded under paragraphs (b)(2) or (3) of this section shall be eligible for discounts under this subpart.

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